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**(1996) 07 NCDRC CK 0052**

**In the National Consumer Disputes Redressal Commission**

Indian Oil Corporation Ltd.

APPELLANT

Vs

RAGHBIR SINGH SAINI

RESPONDENT

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**Date of Decision :** 04-07-1996

**Acts Referred:**

**Citation :** 1996 3 CPJ 602 : 1997 1 CLT 54 : 1997 1 CPC 58

**Hon'ble Judges :** A.L.Bahri , R.L.Gupta , Gurkanwal Kaur J.

**Final Decision :** Appeal accepted

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**Judgement**

1. THE short question but of great importance arises in this case as to whether consumers of Gas (LPG) are entitled to interest on the security amount deposited with the dealer or supplier of the gas. District Forum, Ropar vide order dated 25.3.96 allowed the complaint filed by Raghbir Singh Saini and Harjinder Kaur giving directions to the opposite parties to pay interest at the rate of 10% per annum on the amount of security deposited along with costs of the proceedings Rs. 500/-.

2. IN the complaint, it was alleged that a sum of Rs. 900/- was deposited by Raghbir Singh Saini with the INdian Oil Gas Agency run by opposite party No. 2 M/s. Joti Gas Service, Ropar and a sum of Rs. 450/- was deposited by complainant No. 2 Harjinder Kaur with the aforesaid opposite party. These amounts represented security for the gas cylinder. As per terms and conditions, no interest was payable on the security amount. A representation was sent to opposite party No. 1, Chief LPG Manager, INdian Oil Corporation but no action was taken thereon. Reference was made to the decision of District Forum, in Rajasthan State who had directed payment of interest on the security amount in the case reported as Rajasthan State Electricity Board, Kota v. Small Scale INdustries Association, Kota, 1991 CPR 291. The claimants claimed to be consumers as defined under the Act as using gas for domestic purposes. The opposite parties contested the claim by filing separate replies but taking almost similar pleas, maintainability of the complaint was challenged. The deposit of the amount as security was not disputed. However, it was stated that procurement

cost of the cylinder was Rs. 850/- whereas the security deposited was ranging from Rs. 90/- to Rs. 450/- per cylinder. Reference was made to the security deposited for the regulator also. Its price was stated to be Rs. 150/- but security deposited was from Rs. 10/- to Rs. 50/- per regulator. It was asserted that in order to maintain LPG equipment upto the safety standards, it was necessary to take steps and meet additional expenditure which is not separately recovered from the consumers. Reference was made to the normal wear and tears during transportation and handling of equipment necessitated repairs from time-to-time. Some of the consumers in the country took up this matter in the High Court as well as before the agencies established under the Consumer Protection Act. Reference was also made to the terms and conditions of loaning of the cylinders (equipment) against security deposited. The opposite parties were not charging any rent for the equipment supplied. At the time of issuing of the connection, terms and conditions were agreed upon by the complainants. On behalf of the complainants, affidavit of Raghbir Singh Saini was filed who also produced some documents relating to the payments made which contains terms and conditions governing the loan of INdane Cylinder and Regulator to customers. On the other hand, affidavit of Shri Vijay Lakshmi Rai, Deputy Manager, INdian Oil Corporation was filed who supported the allegations made in the reply. Mr. Ashish Kapoor, learned Advocate for the appellant-Indian Oil Corporation has argued that the decision of the Supreme Court in Jagdamba Paper Industries v. Haryana State Electricity Board, AIR 1983 SC 1296 allowing interest on the amount of security for electricity meter etc. is not applicable to the case in hand. The Electricity Boards are charging rent for the meters provided whereas in the case of supplying gas in cylinders, no rent for the cylinder is charged by the opposite parties. There is force in this contention. For deposit of the security for the electricity meter, no services were being rendered by the Electricity Boards and the amount remained with the Electricity Board which belong to the consumers of electricity and the Supreme Court held that on such deposits, the consumers of electricity were entitled to get interest. It may be observed that subsequently the Electricity Boards changed the nomenclature of the security deposited to "advance consumption charges." Thus obviously, the question of allowing interest to the consumer of electricity did not arise. Electricity being an article which is supplied regularly, however, it could not be charged regularly on day-to-day basis. The question which requires consideration in the present case is as to whether some services are rendered by the opposite parties for which the opposite parties are entitled to keep the amount of the security and utilise interest accruing thereon. On facts, it is not disputed that the gas agency is supposed to replace the gas cylinder with refill from time-to-time and supply the refill at the residence of the consumer. It is also the duty of the Indian Oil Corporation to maintain supply of the gas through the gas dealer and to maintain the equipment. Thus it cannot be said that the charging of the security for the gas cylinder has nothing to do with the services to be rendered by the opposite parties. The fixation of the amount of security can hardly be a consumer dispute. Thus it is not considered necessary to go into details of the

actual price of the cylinder and the amount of security deposited fixed. Orissa High Court in O.J.C. No. 2301 of 1985-Orissa Consumers' Association and Another v. Union of India and Others, decided on 27.2.91 held that the Corporation was not exploiting its monopolistic business to the detriment of the consumers by asking them to deposit interest free security money. Copy of the judgment has been attached with the appeal as Annexure P-1. The State Commission, Union Territory Chandigarh relied upon the aforesaid decision of the Orissa High Court in National Consumers Awareness Group v. The Chief Area Manager, Indian Oil Corporation, Chandigarh, decided on 8.12.95, copy of the judgment has also been produced along with the present appeal as Annexure P-3. We are in full agreement with the view expressed in the two decisions referred to above in accepting the stand of the Indian Oil Corporation. We hold that on account of deposit of the security amount for the gas cylinder certain services are provided by the Indian Oil Corporation as well as its dealer and the amount of the security deposited cannot be questioned in these proceedings.

Reference may be made to terms and conditions on the basis of which the security amount is charged Annexure A-3. A perusal of the terms and conditions mentioned in Annexure A-3 indicates that for depositing the security amount certain obligations have been provided for the consumer to take care of the equipment supplied. Term No. 2 provides that such deposit as security would be for the due performance of the consumer of his obligation, under this contract. It is not necessary to refer to such terms and conditions in detail. Suffice it to say that none of the terms and conditions refers to any obligation on the part of the opposite parties and under such obligations we have to bank upon the pleadings of the parties. As already stated above, it is the case of the opposite parties that they are providing service of maintaining the equipment supplied for which security amount is collected. This matter also came up for consideration before the National Commission though in a different context in M/s. Indian Oil Corporation Ltd. v. Smt. L.S. Lalitha & Ors., 1992 (1) CPR 547 that was a case of compensation on account of death caused by accident in the matter of use of LPG. It was alleged on behalf of Indian Oil Corporation that they were offering services free of charge and the consumer could not claim damages. The National Commission observed as under : "Though it appears that there is no direct payment made by the consumer to the Distributor of L.P.G., the cost of the hiring of the cylinder includes the service charges too. The Distributor does not do any charitable work. He gives his services on the basis of the contract he has with the Oil Company and in consideration of the payment of hire charges paid by the consumer which include the cost of service. And if the accident has occurred partly due to the defect in the equipment supplied and partly due to the negligence of the Mechanic who came from the Distributor, then both the Distributor and the Oil Company were rightly held responsible."

3. NOW in the present case specifically stand has been taken up by the Indian Oil Corporation that the security amount collected from the consumers is consideration for rendering services. The decisions relied upon by the District

Forum relating to payment of interest on the security deposited in electricity matter cases cannot be sustained. For the reasons recorded above, this appeal is accepted. The order of the District Forum is set aside and the complaint stands dismissed. However, there will be no order as to costs. Appeal accepted.